

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Ultra PRO International, LLC,)	
)	
Plaintiff,)	Case No.: 24-cv-04725
)	
v.)	District Judge: Manish S. Shah
)	
BCW Diversified, Inc.,)	Magistrate Judge: Gabriel A. Fuentes
)	
Defendant.)	

DECLARATION OF ERIC BROWNELL

I, Eric Brownell, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Eric Brownell. I am over the age of 18. All statements of fact made herein are based on my personal knowledge, or, where indicated, based on my investigation in which case I believe them to be true.
2. I am President of Defendant BCW Diversified, Inc. ("BCW"). I have served the company in that capacity since 2009.
3. If called as a witness at the trial of this matter, I would testify to the facts set forth herein.
4. BCW Diversified, Inc. ("BCW") was first incorporated on March 1, 1995 as an Indiana corporation.
5. BCW launched its website <https://www.bcwsupplies.com> in 1999. BCW sells its products in all 50 states and abroad through its website, <https://www.bcwsupplies.com> as well as

on Amazon. The products Plaintiff complains of were advertised by BCW on <https://www.bcwsupplies.com> and on Amazon nationally and internationally.

6. BCW has always maintained its business headquarters in Indiana, where it manufactures, inventories, and distributes products.

7. BCW's sole brick and mortar facility and headquarters is located at 8984 IN-236, Middletown, IN 47356, which is in Henry County, Indiana about 47 miles northeast of Indianapolis.

8. BCW is an Indiana corporation.

9. BCW has no offices or employees in Illinois.

10. BCW manufactures and sells collectible accessories, supplies and related merchandise, including plastic sleeves used to protect collectible cards.

11. BCW designs, manufactures, imports and stores allegedly infringing products at its Middletown, IN facility, from which it operates and distributes its products. Since approximately June 2023, BCW has also utilized Amazon warehouses domestically and internationally.



12. Plaintiff Ultra PRO International, LLC ("Ultra Pro") is a competing manufacturer, wholesaler, and retail seller of protective card sleeves, binders, and holders for collectible trading cards and game cards. It is based in California. It sells its products on its website, <https://ultrapro.com/>, and on Amazon.

13. Ultra Pro is a much larger company with greater sales and resources than BCW. It claims in its Complaint that it has been in operation for decades, that it "is extremely well known and famous for its products," that its products are known by "card game and collection enthusiasts across the nation, and the world", and that it leads the industry for the development and sale of products designed to protect collectable cars. (Dkt 1 at ¶ 7).

14. Ultra Pro sells a much larger volume of the products at issue in this case than BCW does. By way of example, below are screenshots I took from Amazon's website on August 6, 2024:

- a. Based on Amazon sales records, Ultra Pro sells 100 packs of 3"x4" top loaders at the rate of 13,563 / month and 200 packs at the rate of 12,213 / month.

Product ID	Category	Rank	Variations	Sellers	Fulfillment	30 day Revenue	30 day Unit Sales
B076V4V2QQ	Sports & Outdoors	#183	1	21	FBA	206,700.12	13,563
B08B9LWQ36	Sports & Outdoors	#325	1	13	FBA	315,950.31	12,213

Product Image	Product Title	Rating	Recent Sales
	Ultra Pro 3" x 4" Clear Regular TopLoaders For Cards With Card Sleeves Bundle Standard Size 100ct Trading Baseball Toploader Card Sleeve...	★★★★★	12,770 10K+ bought in past month
	Ultra Pro 3" x 4" Clear Regular Toploaders for Cards with Card Sleeves Bundle Standard Size 200ct Baseball Card Sleeves Trading Card Sleeve...	★★★★★	4,687 10K+ bought in past month

- b. Based on Amazon sales records, BCW sells 100 packs of 3"x4" top loaders at the rate of 694 / month and 200 packs at the rate of 1,018 / month. That means BCW sells about 5% the volume of 100 packs that Ultra Pro sells and about 8% the volume of 200 packs that Ultra Pro sells on Amazon.

 **B0CXQ8KDKM**   

Sports & Outdoors #13,725 

Collectible Trading Card Protec... #135

Variations	Sellers	Fulfillment
2	1	FBA

30 day Revenue **9,709.06** 

30 day Unit Sales **694** 



BCW

Card Sleeves and Toploaders for Card Combo | Premium Top loaders for Cards and Acid-Free Penny Sleeves | Great for Football, Magic...

★★★★★  65

300+ bought in past month

 **B0864PM233**   

Sports & Outdoors #23,801 

Collectible Trading Card Protec... #223

Variations	Sellers	Fulfillment
1	1	FBA

30 day Revenue **26,417.1** 

30 day Unit Sales **1,018** 



BCW





































































200 Top Loaders + Penny Sleeves | 200 Each: Trading Card Sleeves & Toploaders for Cards | for Your TCG, Pokemon, MTG Cards, Ultra Clear...

★★★★★  815

800+ bought in past month

- c. The disparity in sales volume shown for the above products also exists with respect to other products sold by both companies, as reflected in the additional screenshots shown below from Amazon that I took on August 6, 2024:

<input type="checkbox"/>		8	Ultra Pro 3" x 4" Super Clear Premium...	B00095M5C2	Ultra Pro	\$6.07		1,203	\$7,302.21	91	Sports & Outdoors #7,312
<input type="checkbox"/>		9	Ultra Pro 3" X 4" Clear Regular Toploader...	B000Q5ZMM0	Ultra Pro	\$5.94		3,328	\$19,768.32	114	Sports & Outdoors #1,340
<input type="checkbox"/>		16	Ultra Pro 3" X 5" Toploader 25ct	B0014BWYDA	Ultra Pro	\$9.99		79	\$789.21	32	Sports & Outdoors #94,268
<input type="checkbox"/>		18	Ultra PRO 3" x 4" Clear Regular...	B0889LWQ36	Ultra Pro	\$25.87		12,213	\$315,950.31	190	Sports & Outdoors #325
<input type="checkbox"/>		19	Ultra PRO 3" x 4" Clear Regular...	B076V4V2QQ	Ultra Pro	\$15.24		13,563	\$206,700.12	147	Sports & Outdoors #183
<input type="checkbox"/>		23	Ultra Pro 3x4 inch Regular Toploader - 1...	B0D6SS6J1	Ultra Pro	\$14.99		15	\$224.85	47	Sports & Outdoors #236,278
<input type="checkbox"/>		30	Ultra Pro 3" X 4" Regular Toploader (25ct)	B07GX5SN9J	Ultra Pro	\$5.80		86	\$498.80	42	Sports & Outdoors #223,400
<input type="checkbox"/>		37	3X4 ULTRA PRO PREMIUM TOPLOADER...	B00S78DC4	Ultra Pro	\$23.20		69	\$1,600.80	48	Sports & Outdoors #62,846
<input type="checkbox"/>		>	Ultra Pro 3 x 4 Super Thick Baseball Card...	B00095VCYY	Ultra Pro	\$8.49		2,862	\$24,298.38	103	Sports & Outdoors #2,105
<input type="checkbox"/>		43	Ultra Pro 3" X 4" Action Packed 55PT...	B001Q77T12	Ultra Pro	\$8.99		630	\$5,663.70	51	Sports & Outdoors #17,135
<input type="checkbox"/>		55	Ultra PRO - Regular Toploaders (35 ct.) f...	B08BXDXR6K	Ultra Pro	\$8.14		13	\$105.82	160	Sports & Outdoors #121,660
<input type="checkbox"/>		57	Ultra Pro 3" X 4" Super Thick 100PT...	B07576ZVK	Ultra Pro	\$21.92		1	\$21.92	57	Sports & Outdoors #420,706
<input type="checkbox"/>		62	Ultra Pro Super Thick 260PT Toploader...	B01N99QB9W	Ultra Pro	\$6.80		571	\$3,882.80	70	Sports & Outdoors #14,509
<input type="checkbox"/>		63	3" X 4" Super Thick 130 pt Toploader wit...	B087BLDX8Z	Ultra Pro	\$31.39		265	\$8,318.35	69	Sports & Outdoors #179,848
<input type="checkbox"/>		65	Ultra Pro Toploaders Card Protectors Ultr...	B08BWQJ1QF	Ultra Pro	\$9.25		0	\$0.00	92	Sports & Outdoors #660,782
<input type="checkbox"/>		68	Ultra Pro 3" X 4" Super Thick 130pt...	B00Z201PK	Ultra Pro	\$8.50		24	\$204.00	52	Sports & Outdoors #87,719

<input type="checkbox"/>			4	BCW Card Sleeves and Toploaders f...	BCW	B0CXQ8G5KT 	\$24.99		694	\$17,343.06	199	Sports & Outdoors #13,725 
<input type="checkbox"/>			10	BCW 3x4 Topload Card Holder ~...	BCW	B07K1WGRQ1 	\$5.39		243	\$1,309.77	182	Sports & Outdoors #44,374 
<input type="checkbox"/>			11	BCW Card Sleeves and...	BCW	B0CXQ8G5KT 	\$24.99		694	\$17,343.06	199	Sports & Outdoors #13,725 
<input type="checkbox"/>			12	BCW 3x4 Standard Topload...	BCW	B0BLWD64NL 	\$22.99		1,719	\$39,519.81	173	Sports & Outdoors #3,586 
<input type="checkbox"/>			17	BCW 3x4 Topload Card Holder - Standar...	BCW	B000Y50CSG 	\$3.99		256	\$1,021.44	182	Sports & Outdoors #33,039 
<input type="checkbox"/>			20	BCW 3.5x5 Topload Holder - 25 Pack [...]	BCW	B003C23PFU 	\$12.99		312	\$4,052.88	182	Sports & Outdoors #45,797 
<input type="checkbox"/>			22	BCW 197 PT. Thick Card Topload Holder ...	BCW	B0D679PR1M 	\$8.67	N/A 	N/A 	178	\$142,494	
<input type="checkbox"/>			26	BCW 3x4 Standard Topload Card...	BCW	B0BLWD64NL 	\$22.99		1,719	\$39,519.81	173	Sports & Outdoors #3,586 
<input type="checkbox"/>			27	BCW 3x4 Topload Card Holder ~...	BCW	B005LR7GK4 	\$12.99		1,413	\$18,354.87	183	Sports & Outdoors #4,417 
<input type="checkbox"/>			31	BCW 3x4 Topload Card Holder - Standar...	BCW	B005LR7GK4 	\$12.99		1,413	\$18,354.87	183	Sports & Outdoors #4,417 
<input type="checkbox"/>			32	BCW 3x4 Standard Topload Card Holde...	BCW	B0BLWD64NL 	\$22.99		1,719	\$39,519.81	173	Sports & Outdoors #3,586 
<input type="checkbox"/>			36	BCW 6 Cell Cargo Card Storage Box...	BCW	B0CQ3CZNU6 	\$18.99		166	\$3,152.34	197	Toys & Games #69,489 
<input type="checkbox"/>			42	BCW 3x4 Topload Card Holder - Black...	BCW	B000VB60I0 	\$7.99		46	\$367.54	186	Office Products #68,226 
<input type="checkbox"/>			48	BCW 3x4 Topload Card Holder - Standar...	BCW	B07DKWFFD8 	\$25.98		120	\$3,117.60	183	Sports & Outdoors #82,695 
<input type="checkbox"/>			51	BCW 3x4 Topload Card Holder - Premiu...	BCW	B00338G9NI 	\$5.98		52	\$310.96	180	Sports & Outdoors #145,784 
<input type="checkbox"/>			64	BCW 3x4 Premium Toploader Card Hold...	BCW	B00ZZ10YCS	\$5.98		0	\$0.00	49	Sports & Outdoors #424,392

- d. The sales data in the above tables show that Ultra Pro's sales of penny sleeves and toploader card sleeves on Amazon total \$595,328.87 for the last 30 days, whereas BCW's sales for the same kinds of products on Amazon totals \$184,932.95. That means that BCW's sales of comparable products are less than one-third of Ultra Pro sales (31% to be precise).

15. I, Eric Brownell (President of BCW), Mr. Ted Litvan (Marketing Manager with BCW since 2013), and Kenneth O'Brien, Jr. (Director of Business Development with BCW since 2003) possess relevant information about the development, sale and distribution of the allegedly infringing products and the marketing of same. We all work at BCW's Middletown, IN facility, and reside in the greater Indianapolis area. We are all knowledgeable about the adoption of the marks used by BCW, and about use of similar marks by many parties in the industry, both currently and historically. We are perhaps the three witnesses most knowledgeable about the facts and defenses the company plans to raise in response to Plaintiff's claims.

16. Records relevant to the development, marketing, and sale of the allegedly infringing products are exclusively located at BCW's Middletown, IN facility.

17. BCW's records custodians, Stephanie Sasser (who is our office manager) and myself work at BCW's Middletown, IN facility.

18. To the best of my knowledge, no physical company records are located in Illinois.

19. Other witnesses who have information about the development, marketing, sale and distribution of the allegedly infringing products work at BCW's Middletown, IN facility. All but three of our company's approximately 85 employees live in the Greater Indianapolis area. None lives in the Northern District of Illinois or in the State of Illinois.

20. Individuals likely to be disclosed as BCW's corporate representatives most knowledgeable about the facts, claims, and defenses work at BCW's Middletown, IN facility.

21. BCW's bankers, book keepers, and outside accountants work in Indiana and, I

believe, maintain their records in Indiana.

22. BCW's outside marketing and web development partners, who can attest to whether any of the Plaintiff's goods, marketing materials, website(s) or trademarks were ever provided to them by BCW for use when designing BCW's allegedly infringing content, work in Indiana and, I believe, maintain their records in Indiana.

23. With respect to BCW's customers and vendors who may help prove or disprove allegations of confusion, they are distributed throughout the country and abroad.

24. To the extent there are BCW employees who received reports of confusion (if any) from customers (or can attest to the *lack* of such reports), those employees work at BCW's Middletown, IN facility.

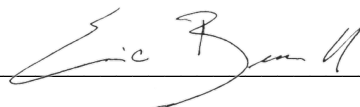
25. I am not aware of any third-party witnesses who are located in Illinois, other than the identities of some purchasers of BCW products who are either located in Illinois or had products shipped there. The vast majority of our customers do not reside in Illinois.

26. Litigating this case in Chicago would be extremely burdensome on BCW and inconvenient for all BCW witnesses. It takes about four hours (without significant traffic) to drive from BCW's facility to the Dirksen Building in Chicago. I believe the amount of time and expense litigating this case would be drastically reduced if it were transferred to Indianapolis.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 and the laws of the United States that the foregoing is true and correct based on my knowledge, information, and belief.

08/15/2024

Date



Eric Brownell